

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1502
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF ENTRY OF JUDGMENT

Original Filing Supplemental Filing Corrected Filing

Please print or type required information

PARTIES TO THE ACTION	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN JUDGMENT				
CASE INFO	COURT DOCKET NUMBER		COURT NAME		
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER	
	DATE SUBMITTED TO COURT / /	IS JUDGMENT PURSUANT TO SETTLEMENT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL / /		For Internal Use Only
	COPY OF JUDGMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT				
	ORGANIZATION			TELEPHONE NUMBER ()	
	ADDRESS			FAX NUMBER ()	
	CITY	STATE	ZIP	E-MAIL ADDRESS	

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LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
The Hathaway Building
7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406
Telephone: (818) 809-2199
Facsimile: (424) 243-7689
Email: dgreenbaum@greenbaumlawfirm.com
Attorney for Plaintiff SHEFA LMV, INC.

RECEIVED
ALAMEDA COUNTY

APR 22 2019

CLERK OF THE SUPERIOR COURT
By ALICIA ESPINOZA Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FILED

ALAMEDA COUNTY

JUN 07, 2019

COUNTY OF ALAMEDA

CLERK OF THE SUPERIOR COURT

By C. DeBorja Deputy

SHEFA LMV, INC,
Plaintiff,
v.
SUMMIT CE GROUP & SUMMIT
ELECTRONICS LLC,
Defendant.

Case No. RG18907968

~~PROPOSED~~ CONSENT
JUDGMENT AS TO SUMMIT
ELECTRONICS LLC

Action Filed: June 7, 2018

Filed By Fax

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1. INTRODUCTION

1.1 The Parties. This Consent Judgment is entered into by and between Plaintiff Shefa LMV, Inc. ("Shefa" or "Plaintiff"), acting on behalf of the public interest, and Summit Electronics LLC ("Summit"), with Shefa and Summit collectively referred to as the "Parties" and each of them as a "Party." Plaintiff alleges it is a California public benefit, non-profit corporation that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Plaintiff alleges that Summit is "a person in the course of doing business" for purposes of Proposition 65. Health & Safety Code § 25249.6.

1.2 Allegations and Representations. Plaintiff alleges Summit exposed, and continues to expose, individuals to Diisononyl Phthalate ("DINP") and Di[2-Ethylhexyl] Phthalate ("DEHP") (the "Listed Chemicals") from the use of Coby® headphones (the "Covered Products") without providing a "clear and reasonable warning" under Proposition 65. *Id.* DINP is a chemical known to the State of California to cause cancer. DEHP is a chemical known to the State of California to cause cancer and reproductive toxicity

1.3 Notice of Violation/Complaint. On or about May 26, 2017, Shefa served Summit, and various public enforcement agencies, with a document entitled "Sixty Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "First Notice"), alleging that Summit was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to DINP. On or about November 15, 2018, Shefa served Summit, and various public enforcement agencies, with a document entitled "Sixty Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Second Notice"), alleging that Summit was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the First Notice or Second Notice. On June 7, 2018, Shefa filed a Complaint in the matter as captioned above (the "Action"). On February 25, 2019, Shefa filed a First Amended Complaint in the Action.

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1.4 For purposes of this Consent Judgment only, the Parties stipulate: this Court has jurisdiction over Summit as to the allegations contained in the complaints filed in this Action; venue is proper in the County of Alameda; and this Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims which were or could have been raised in this Action based on the facts alleged in the complaints therein and/or in the First Notice and the Second Notice.

1.5 Summit denies the material allegations contained in the First Notice and the Second Notice and made in this Action and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Summit of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Summit of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Summit. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Summit under this Consent Judgment.

2. **DEFINITIONS**

2.1 **Covered Products.** The term "Covered Products" means headphones that Summit manufactured, imported, offered for sale, and/or sold in California.

2.2 **Effective Date.** The term "Effective Date" means the date the Court enters this Consent Judgment as a Judgment of the Court.

3. **INJUNCTIVE RELIEF: WARNINGS**

3.1 As of the date this Consent Judgment is signed by all Parties, Summit shall not manufacture, or order from any supplier, any Covered Products intended for retail sale in California that contain DINP and DEHP on any component to which consumers are exposed in excess of 0.1% (1,000 parts per million (ppm) (hereinafter "Reformulated Products") unless the Covered Product is accompanied by a warning that complies with the requirements of Section 3.2, or any Proposition 65 law or regulation specifying the method of transmission and content of the warning effective on or after the Effective Date. Covered Products sold or distributed by

1 Summit before the date all Parties sign this Consent Judgment may sell through without a
2 warning even if not Reformulated Products.

3 **3.2 Warning Language.** For Covered Products manufactured before August 30,
4 2018, a warning provided under Section 3.1 shall consist of either:

5 (a) The statement: **“PROP 65 WARNING FOR CA RESIDENTS: This**
6 **product may contain chemicals known to the State of California to cause cancer,**
7 **birth defects or other reproductive harm”**; or

8 (b) A symbol consisting of a black exclamation point in a yellow equilateral
9 triangle with a bold black outline to the left of the word “warning” in bold all
10 capital letters, followed by the statement: “This product can expose you to
11 chemicals including Di[2-Ethylhexyl] Phthalate (DEHP), which is known to the
12 State of California to cause cancer and birth defects or other reproductive harm.
13 For more information, go to www.P65Warnings.ca.gov”; or

14 (c) A symbol that is a black exclamation point in a yellow equilateral triangle
15 with a bold black outline to the left of the word “warning” in bold all capital
16 letters, followed by the statement: “Cancer and Reproductive Harm -
17 www.P65Warnings.ca.gov.”

18 The symbol specified in Sections 3.2(b) and 3.2(c) may be in a white triangle if the sign,
19 label, shelf tag or other transmission format on which the warning is provided is not printed using
20 the color yellow.

21 For Covered Products manufactured on and after August 30, 2018, the warning set forth in
22 either Section 3.2(b) or 3.2(c) shall be used.¹

23 **3.3 Warnings; Method of Transmission:** The warning provided pursuant to Section
24 3.1 shall be prominently affixed to or printed on the packaging, labeling, or instruction booklet
25

26 ¹ For Covered Products manufactured before May 19, 2019, the warning set forth in 3.2(c)
27 may consist of a black exclamation point in a yellow equilateral triangle with a bold black outline
28 to the left of the word **“WARNING”** in bold all capital letters, followed by the statement:
“Cancer and reproductive harm - www.P65Warnings.ca.gov.”

1 and displayed with such conspicuousness, as compared with other words, statements, or designs
2 as to render it likely to be read and understood by an ordinary individual under customary
3 conditions of purchase or use.

4 **4. MONETARY TERMS**

5 **4.1 Payment from Defendant.** Within ten (10) business days of Summit's receipt of
6 the Order approving entry of this Consent Judgment and the entered Consent Judgment,
7 Defendant shall make the Total Settlement Payment of \$23,100.00.

8 **4.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
9 separate checks made payable and allocated as follows:

10 **4.2.1 Civil Penalty.** Defendant shall pay \$4,000.00 as a civil
11 penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
12 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
13 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
14 OEHHA portion of the civil penalty payment in the amount of \$3,000.00 shall be made payable
15 to "OEHHA" and associated with taxpayer identification number 68-0284486. This payment
16 shall be delivered as follows:

17 For United States Postal Service Delivery:

18 Attn: Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 P.O. Box 4010, MS #19B
22 Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery:

24 Attn: Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 1001 I Street, MS #19B
28 Sacramento, CA 95814

The Shefa portion of the civil penalty payment in the amount of \$1,000.00 shall be
made payable to "Shefa LMV, Inc." and associated with taxpayer identification number 81-

1 0907002. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120
2 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

3 **4.2.2 Attorney's Fees and Costs.** A reimbursement of Shefa's attorney's fees
4 and costs in the amount of \$19,100.00 payable to the "Law Office of Daniel N. Greenbaum," and
5 associated with taxpayer identification number 46-4580172. This payment shall be delivered to
6 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA
7 91406.

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1** This Consent Judgment is a full, final, and binding resolution between Plaintiff
10 acting in the public interest, and Summit and its parents, shareholders, divisions, subdivisions,
11 subsidiaries, partners, sister companies, and affiliates, and their successors and assigns, including
12 Summit CE Group, and its parents, shareholders, divisions, subdivisions, subsidiaries, partners,
13 sister companies, and affiliates, and their successors and assigns ("Defendant Releasees"), and all
14 entities from whom they obtain or to whom they directly or indirectly distribute or sell Covered
15 Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,
16 customers, licensors, licensees, retailers, franchisees, and cooperative members, including but not
17 limited to Marshalls, The TJX Companies, Inc., The TJX Operating Companies, Inc. and each of
18 their subsidiaries and affiliates ("Downstream Defendant Releasees"), of all claims for violations
19 of Proposition 65 based on exposure to the Listed Chemicals from Covered Products as set forth
20 in the First Notice and Second Notice, with respect to any Covered Products manufactured,
21 distributed, or sold by Summit prior to the Effective Date. Compliance with the terms of this
22 Consent Judgment constitutes compliance with Proposition 65 regarding the Covered Products.

23 **5.2** In addition to the foregoing, Plaintiff, each on behalf of himself or itself, their past
24 and current agents, representatives, attorneys, and successors and/or assignees, and *not* in their
25 representative capacity, hereby waives all rights to institute or participate in, directly or indirectly,
26 any form of legal action and releases Summit, Defendant Releasees, and Downstream Defendant
27 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
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1 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
2 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity,
3 fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65
4 related to or arising from Covered Products manufactured distributed or sold by Summit or
5 Defendant Releasees. With respect to the foregoing waivers and releases in this paragraph,
6 Plaintiff hereby specifically waives any and all rights and benefits which they now have, or in the
7 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil
8 Code, which provides as follows:

9
10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
11 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
12 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
13 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
14 THE DEBTOR.

15
16 5.3 Summit waives any and all claims against Plaintiff, their attorneys and other
17 representatives of Plaintiff, for any and all actions taken, or statements made (or those that could
18 have been taken or made) by Plaintiff and their attorneys and other representatives of Plaintiff,
19 whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65
20 against it in this matter, and/or with respect to Covered Products.

21
22 **6. INTEGRATION**

23
24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
26 merged within it. No representations or terms of agreement other than those contained herein
27 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

28
7. GOVERNING LAW

7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
California and apply within the State of California. In the event Proposition 65 is repealed or is
otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
Summit shall have no further obligations pursuant to this Consent Judgment with respect to, and
to the extent that, Covered Products are so affected.

1 **8. NOTICES**

2 **8.1** Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
4 first-class, (registered or certified mail) return receipt requested; (ii) overnight courier; or (iii)
5 electronic mail on any party by the other party at the following addresses:

6 For Summit:

7 Summit Electronics, LLC
8 Attn: Sonny Antebi
9 1 Rewe Street
10 Brooklyn, NY 11211

11 With a copy to:

12 Jay W. Connolly
13 Seyfarth Shaw LLP
14 560 Mission Street, Suite 3100
15 San Francisco, CA 94105
16 jconnolly@seyfarth.com

17 For Shefa:

18 Daniel N. Greenbaum
19 Law Office of Daniel N. Greenbaum
20 The Hathaway Bldg.
21 7120 Hayvenhurst Ave., Ste. 320
22 Van Nuys, CA 91406

23 Any Party, from time to time, may specify in writing to the other party a change of address to
24 which all notices and other communications shall be sent.

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

26 **9.1** This Consent Judgment may be executed in counterparts and by facsimile or
27 portable document format (PDF), each of which shall be deemed an original, and all of which,
28 when taken together, shall constitute one and the same document.

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 **10.1** Plaintiff agrees to comply with the requirements set forth in California Health &
4 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
5 and Summit agrees it shall support approval of such Motion.

6 **10.2** This Consent Judgment shall not be effective until it is approved and entered by
7 the Court and shall be null and void if, for any reason, it is not approved by the Court. In such
8 case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached
9 within 30-days, the case shall proceed on its normal course.

10 **10.3** If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
12 Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall
13 proceed on its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 **11.1** This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either
17 Party.

18 **12. RETENTION OF JURISDICTION**

19 **12.1** This Court shall retain jurisdiction of this matter to implement or modify the
20 Consent Judgment.

21 **13. ENFORCEMENT**

22 **13.1** The Parties may, by noticed motion or order to show cause before the Superior
23 Court of Alameda County, giving the notice required by law, enforce the terms and conditions
24 contained herein.

25 **13.2** Before bringing any noticed motion or order to show cause, a Party seeking to
26 enforce the terms of this Consent Judgment shall provide the other party thirty (30) days advance
27 written notice of any alleged violation(s). The Parties shall meet and confer in good faith during
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1 such thirty (30) days in an effort to reach an agreement on an appropriate cure for the alleged
2 violation(s). No action or motion may be filed in the absence of such a good faith attempt to
3 resolve the dispute beforehand.

4 **13.3** If the Party alleged to be in violation corrects the purported violation(s) within
5 thirty (30) days of receiving written notice, the Party seeking to enforce this Consent Judgment
6 shall take no further enforcement action with respect to such violation(s) under either this
7 Consent Judgment, or any other law.

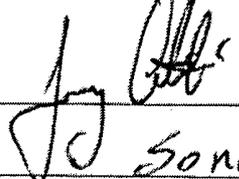
8 **13.4** In any proceeding brought by either party to enforce this Consent Judgment, such
9 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
10 violation of this Consent Judgment.

11 **14. AUTHORIZATION**

12 **14.1** The undersigned are authorized to execute this Consent Judgment on behalf of
13 their respective Parties and have read, understood, and agree to all of the terms and conditions of
14 this document and certifies that he or she is fully authorized by the Party he or she represents to
15 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
16 Except as explicitly provided herein each Party is to bear its own fees and costs.

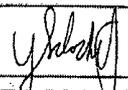
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18 **AGREED TO:**

AGREED TO:

19
20 Date: 

Date: 4/3/2019

21 By: Sonny Antes
22 SUMMIT ELECTRONICS, LLC

21 By: 
22 SHEFA LMW, INC.

~~PROPOSED~~ JUDGMENT

Please note that on 6/7, 2019 at 11:00AM, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion to Approve Entry of Consent Judgment as to Defendant Summit Electronics, LLC ("Defendant") came for hearing before this Court in Department 21, the Honorable Winifred Y. Smith presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

After full consideration of the points and authorities and related pleadings submitted, the Court GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following findings pursuant to Health & Safety Code § 25249.7(f)(4):

- a. The injunctive relief required by the Settlement Agreement complies with Health & Safety Code § 25249.7;
- b. The reimbursement of fees and costs to be paid pursuant to the Settlement Agreement is reasonable under California law; and
- c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.

June 7, 2019
Date

Winifred Y. Smith
Judge of the Superior Court